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SUBJECT: VIETNAM: WTO Legislative Strategy Still Unclear

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[11.](#) (SBU) Summary: During a visit to Hanoi January 28-31, Deputy Assistant USTR for Southeast Asia and the Pacific, Elena Bryan and USPTO Attorney-Advisor Jennie Ness told key GVN officials and the National Assembly (NA) that timely passage of legislation implementing WTO obligations is a pressing issue for Vietnam's accession. DAUSTR Bryan also reminded GVN counterparts that the GVN must submit draft legislation to the WTO Working Party (WP) for review before the NA finalizes the legislation. Additionally, Bryan reminded GVN officials that a good record on implementation of the U.S. - Vietnam Bilateral Trade Agreement (BTA) will be an important element of Congressional consideration of Permanent Normal Trade Relations (PNTR) for Vietnam. GVN officials indicated they are still debating internally how to complete all of the legislation required for WTO accession. A Vice Chairman of the Law Committee of the NA said he does not think the NA has enough time to pass all the necessary legislation. The NA is considering using a new Law on International Treaties to make some of the WTO obligations self-executing. End Summary.

[12.](#) (U) DAUSTR Bryan and Ms. Ness visited Hanoi January 28 to January 31. The delegation, accompanied by Econoffs, met with officials from the Ministry of Finance (MOF), the National Office of Intellectual Property (NOIP), the Economic Police Department (under the Ministry of Public Security), the Ministry of Planning and Investment (MPI), the Office of Literary and Artistic Copyright, the Law Committee of the National Assembly (NA), the Ministry of Trade (MOT), the Office of the Government (OOG) and the Ministry of Justice (MOJ).

[13.](#) (SBU) DAUSTR Bryan and Ms. Ness emphasized throughout the visit that one of the most pressing issues for Vietnam's WTO accession bid is timely passage of legislation implementing the WTO agreements. They also reminded GVN officials that the WTO Working Party (WP) wants to review all draft legislation related to Vietnam's accession before the legislation is submitted to the National Assembly for approval. It is important that Vietnam begin submitting drafts as soon as possible, DAUSTR Bryan advised. WP members need sufficient time to review draft legislation and provide comments. Vietnam also needs time to make changes before any legislation is finalized.

[14.](#) (SBU) It is important that WP members have legislation to review as soon as possible and certainly not later than the next WP meeting, DAUSTR Bryan said. There are only a few months until the NA's next session and there is a lot to be done. (Note: There will be two NA sessions in 2005, May and November. End Note.) Vietnam needs to demonstrate that its goal of accession in 2005 is realistic. The GVN can do this by providing draft legislation to the WTO WP for review soon. This will help build WP members' confidence that Vietnam will be able to finalize all the necessary legislation by the end of the year.

[15.](#) (SBU) For the United States in particular, it is important that progress on both bilateral market access negotiations and the passage of legislation proceed in tandem. USTR cannot begin consultations with the U.S. Congress until both pieces of Vietnam's accession are ready, DAUSTR Bryan said. When the Congress begins examining the details of Vietnam's accession agreement, it will want to see not only the commitments Vietnam has made on market access, but also the details on how Vietnam is implementing WTO rules.

GVN Still undecided on Legislative Process

[16.](#) (SBU) Ha Huy Tuan, Deputy Director of MOF's International Cooperation Department, noted the GVN is still discussing internally how it will meet WTO legislative requirements. At a meeting held after the 9th WP in December, Deputy Prime Minister Vu Khoan assigned MOT and MOJ to take the lead on drafting a legislative plan for the Prime Minister. The DPM

also instructed the ministries to work closely with the National Assembly on the legislative schedule. According to Tuan, the GVN is considering two options: it will either closely follow the legislative action plan it has already submitted to the WTO or it will construct a "package deal" with the National Assembly (e.g. an omnibus bill that amends multiple laws for compliance with WTO obligations). Tuan said he believes an omnibus bill is "highly possible." (Note: According to MOJ, the only other ministry to mention use of an omnibus bill, the GVN is considering a project to "further study" the idea. End note.)

17. (SBU) Tuan noted that one of the difficulties the GVN faces in completing legislation is how to deal with details that are still under negotiation. Although WTO rules are clear, other issues such as market access are still open, he said. DAUSTR Bryan suggested that the GVN could draft its legislation to include authority for the Prime Minister to implement final tariff levels and other market access components based upon Vietnam's final WTO schedule. Tuan responded he did not believe the GVN's system could accommodate this method. Rather, he thought the GVN would construct the legislation to allow Vietnam's international agreements to supersede domestic law. With this method, once the WTO agreement is in place, domestic law would be adjusted automatically, he said. DAUSTR Bryan explained that there should not be discrepancies between Vietnam's international agreements and its domestic laws.

National Assembly on Different Track -----

18. (SBU) Dr. Phan Trung Ly, Vice Chairman of the National Assembly Law Committee, told DAUSTR Bryan and Ms. Ness that the NA is still "perplexed" about how to meet the legislative requirements for WTO accession. Ly noted that while the best method would be for the NA to pass specific legislation implementing all of Vietnam's WTO obligations, this would be a "huge job" for the NA and there is not enough time to do it all. For this reason, the NA has formulated its legislative agenda with a two-pronged approach for meeting WTO obligations. The NA will continue to pass new laws and revise existing laws as required for WTO accession. However, Vietnam will also use its new Law on International Treaties to implement some of its WTO obligations. According to Dr. Ly, the International Treaties Law, scheduled for approval by the NA in May, elevates Vietnam's international obligations above domestic law, in effect making Vietnam's international agreements self-executing. The Law also contains a provision that requires GVN ministries to draft implementing legislation for any aspects of international agreements that are too general for direct implementation.

19. (SBU) DAUSTR Bryan acknowledged the complexity of the legislative issues Vietnam is facing, but expressed concern about the National Assembly's approach to meeting WTO requirements. The texts of many of the WTO agreements are too general for direct implementation. For the most part, the WTO agreements provide guidelines that must be implemented in the domestic laws of the acceding countries; they cannot be self-executing. WP members will want to review drafts of the follow-on implementing regulations before Vietnam can accede to the WTO. Lack of detailed legislation will affect Vietnam's ability to join the WTO as quickly as it has said it wants to.

Law on International Treaties not Primary Instrument -----

10. (SBU) After the NA meeting, DAUSTR Bryan expressed her concerns regarding the NA's legislative plan in discussions with officials from MOT, MOF, OOG and MOJ. She specifically called attention to the fact that Vietnam needs to implement specific WTO obligations in its domestic law and that use of the Law on International Treaties may not accomplish that. Mr. Hoang Phuc Hiep, Director of the International Law Department at MOJ, clarified that the GVN would only use the Law on International Treaties to implement WTO (and other international obligations) in cases where domestic law does not conflict with the WTO obligation and the WTO agreement is specific. Hiep cited implementation of the WTO accession protocol and dispute resolution as two possible examples where the GVN might use this law to implement Vietnam's obligations. DAUSTR Bryan cautioned Hiep that the GVN will need to be very clear which WTO obligations it wants to implement with the Law on International Treaties.

11. (SBU) Responding to DAUSTR Bryan's recommendation that Vietnam begin submitting draft legislation to the WTO WP soon, Hiep noted that the GVN is on track with its WTO legislative action plan. GVN drafters are working with international experts to prepare drafts for submission to the WP and the NA. Most of the thirty laws included in the plan will be submitted to the NA in May. However, Hiep said, he was not clear whether legislation should be

submitted to the WP as each draft is finished or if all the drafts should be submitted at once. DAUSTR Bryan advised Hiep to submit the drafts as they are ready to ensure WP members have time to review them.

IP Legislation - Draft possible in April

12. (SBU) Nguyen Dinh Chuong, Director of NOIP, told DAUSTR Bryan and Ms. Ness that the NA plans to pass the new IPR Law in November. NOIP will submit the draft law to the Government for review soon. Once the Government releases the draft for public comment, NOIP will send it to the WP and bilateral partners. Chuong speculated the draft could be submitted to the WP in April. DAUSTR Bryan noted the importance of IPR for WTO accession and reiterated that it is very important that the WP have time to review the draft law. The WP will want to make sure the draft meets all WTO requirements, including very specific obligations such as protection of data exclusivity.

BTA, WTO and PNTR

13. (SBU) The delegation also emphasized that the GVN must remain committed to timely implementation of the BTA even as Vietnam moves forward with WTO accession. Vietnam's record on implementation of the BTA will be part of Congress' consideration of Permanent Normal Trade Relations (PNTR). Right now there are a couple of areas where BTA implementation is lagging, DAUSTR Bryan noted. For example, the GVN has not yet amended its regulations to allow U.S. companies to establish joint ventures in value-added telecommunications (this BTA obligation was due in December 2003), value-added Internet services (December 2004) or distribution services (December 2004).

Comment

14. (SBU) It is not yet possible to determine whether Vietnam will be able to meet its own ambitious legislative agenda in time for WTO accession in 2005. Although Vietnam is receiving a great deal of technical assistance, capacity and consensus building remain significant problems. Embassy will continue to press the GVN to step up drafting schedules and submit draft legislation to the WTO WP and to us for review over the next few months.

15. (U) DAUSTR Bryan cleared this cable.

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